

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 7269**

**BILL NUMBER:** HB 1273

**NOTE PREPARED:** May 2, 2011

**BILL AMENDED:** Apr 29, 2011

**SUBJECT:** Consumer Protection Matters.

**FIRST AUTHOR:** Rep. Koch

**FIRST SPONSOR:** Sen. Zakas

**BILL STATUS:** Enrolled

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** The bill does the following.

*Unfair Practice:* The bill provides that it is an unfair practice for an automotive manufacturer or distributor to fail to pay certain claims made by an automotive dealer. It authorizes an automotive manufacturer or distributor to: (1) audit certain claims; or (2) charge back to a dealer any amounts paid on false or materially unsubstantiated claims.

*Telephone Solicitation of Consumers:* The bill specifies that the statute governing the quarterly listing of telephone numbers of Indiana consumers who request not to be solicited by telephone applies to a residential telephone subscriber who meets certain requirements.

It also requires the Attorney General's Consumer Protection Division (CPD) to notify Indiana residents of the right of certain subscribers or users to place a telephone number on the listing. It specifies what qualifies as a "telephone sales call".

*Deceptive Consumer Sales and Home Loan Practices:* The bill amends the statute concerning deceptive consumer sales to: (1) provide that a violation of the federal Fair Debt Collection Practices Act is a deceptive act; and (2) include cross references to certain consumer protection statutes, the violation of which constitutes a deceptive act. It limits the civil penalty that the Attorney General may recover for a violation of the Fair Debt Collection Practices Act to \$1,000 per consumer.

It specifies that for purposes of the statute governing home loan practices, a "deceptive act" includes a knowing or intentional misrepresentation made regarding real estate transactions and mortgage transactions.

*Department of Insurance:* The bill provides that the requirement of the collection and storage in an electronic system of certain information about persons participating in or assisting with certain residential mortgage transactions also applies in the case of certain residential real estate transactions that do not involve mortgage transactions. It requires certain additional information about residential mortgage transactions and residential real estate transactions to be collected and stored in the system.

*Certified Nurse Aides:* It requires certain certified nurse aides to be certified by the ISDH and requires the ISDH to: (1) establish a program; (2) prescribe education and training programs; (3) determine specified standards; and (4) establish annual certification fees; for certified nurse aides who work in health facilities.

*Speech-Language Pathologists:* The bill recognizes speech-language pathologists who: (1) before September 1, 1990, completed all the course work and obtained all the experience required to receive a life license from the Department of Education (DOE); and (2) were issued a life license by the DOE; as eligible to supervise speech-language pathology support personnel (in lieu of another requirement to have obtained a certificate of clinical competence from a nationally recognized association). It removes a provision requiring that, to supervise speech-language pathology support personnel, a speech-language pathologist have at least three years of clinical experience. It provides for licensure of speech-language pathologists if certain continuing education standards are met. The bill also voids part of an administrative rule concerning qualification requirements to supervise speech-language pathology support personnel.

**Effective Date:** Upon passage; July 1, 2010 (retroactive); July 1, 2011.

**Explanation of State Expenditures:** The bill potentially increases costs for the Attorney General (AG) with the following provisions.

*Definition of Health Care Provider:* The definition of a health care provider is expanded under the bill, extending the abandoned health care records provisions to apply to a person licensed, certified, registered, or regulated by any of the health care professional boards. [The law requires the AG to determine the records are abandoned, notify patients and others named in the files, and maintain the records for the time specified in statute or three years. Costs under this section are paid from the Health Records and Personal Identifying Information Protection Trust Fund enacted into law in 2010.]

*Telephone Solicitation of Consumers:* The definitions used in the Telephone Solicitation of Consumers Law are amended to indicate that phones using VOIP and mobile telecommunications services are covered and that telephone sales calls include text and graphic messages using short-message service. These changes may increase the number of enforcements made. Also, the AG must include subscribers of interconnected VOIP and mobile telecommunications services in notifications of Indiana residents. [The Telephone Solicitation Fund is composed of fees charged to telephone solicitors for a copy of the telephone privacy list and fines for violations of the Telephone Solicitation of Consumers Law, and the Fund pays for administration of the provisions of the statute and for deceptive acts concerning federal telephone equipment laws. In FY 2010, the Fund received revenue of \$607,500 and had expenses of \$523,900.]

*Deceptive Consumer Sales and Home Loan Practices:* The AG may have additional causes of action arising from violation of federal debt collection laws and out of the clarification that a deceptive act refers to a real estate transaction as well as a mortgage transaction. If the AG is successful in prosecuting the action, the AG may be awarded attorney fees and a civil penalty not to exceed \$1,000 per consumer.

*Department of Insurance:* Modifications to the system required under the bill have already been completed

and will result in no additional fiscal impact. [The RREAL IN database has been up and running a little over a year and became accessible on January 1, 2010.]

*Certified Nurse Aide Requirements:* The Indiana State Department of Health (ISDH) reports that bill language associated with certification and training of CNAs along with the maintenance of a registry for CNAs and registered home health aides is required by federal law. The provisions have no fiscal impact since the bill codifies current practice.

*Speech-Language Pathologists:* This provision would have an indeterminable impact on the administrative workload of the Professional Licensing Agency. The number of persons is unknown who could qualify for licensure with 36 hours of continuing education by the DOE or Professional Licensing Agency and worked at least 9 months out of the last 60 months. Based on the number of DOE licenses provided below in the background section, it is likely the number of persons that could receive licensure under this provision is small.

The provision voiding certain administrative rules would have a minimal impact on the Legislative Services Agency, which publishes the Indiana Administrative Code.

**Explanation of State Revenues:** *Unfair Practice:* This bill adds that it is an unfair practice for a manufacturer or distributor to fail to pay incentive payment claims made by dealers. Under Indiana law, a dealer who is the victim of an unfair act may seek redress in civil court. By adding failure to make incentive payments to the definition of an unfair practice, this bill may increase civil and criminal court actions in the state. The Indiana Secretary of State (SOS) reports that if a dealer believes a manufacturer has engaged in an unfair practice, the dealer is able to file a complaint against the manufacturer with the Dealer Services Division of the SOS. The Division will then conduct an investigation of the identified manufacturer regarding the violation in question. If it is determined a violation did occur, the Division may file an administrative complaint against the manufacturer. As a result, the manufacturer will likely be subject to civil penalty.

If the manufacturer refuses to comply with the order of the Division, the Division may elect to submit the case to the Attorney General to pursue civil court action.

If a dealer's claim against a manufacturer is found to be legitimate, the manufacturer has committed a Class B misdemeanor. The Division would be responsible for submitting the case to the local prosecuting attorney in the county in which the violation occurred.

*Civil Court Fee Revenue:* If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

*Speech-Language Pathologists:* Under current law, persons that violate speech-language pathology law can be charged with a Class B misdemeanor. Given the bill would allow a speech-language pathologist (SLP) with a license issued prior to 9/1/1990 to supervise support personnel without a CCC-SLP, there may be a

slight reduction in the number of cases involving speech-language pathologists. Fewer fines would reduce revenue to both the Common School Fund (from fines) and the state General Fund (from court fees). However, any reduction in revenue would likely be small.

Additionally, the provision would also prevent a person with a license issued prior to 9/1/1990 and without a CCC-SLP from being assessed a civil penalty for the supervision of SLP support personnel in future years. Current law requires a speech-language pathologist to have a CCC to supervise support personnel.

**Explanation of Local Expenditures:** *Penalty Provision:* A Class B misdemeanor is punishable by up to 180 days in jail.

**Explanation of Local Revenues:** *Penalty Provision:* If fewer court actions occur and guilty verdicts entered, local governments would receive less revenue from court fees. However, any reduction in revenue would likely be small.

*Civil Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**State Agencies Affected:** AG; DOI; ISDH.

**Local Agencies Affected:** Trial courts, local law enforcement agencies, city and town courts, local prosecuting attorney.

**Information Sources:** Randall Evans, DOI, 317-234-5881; Logan Harrison, DOI, 317-234-7734; and Indian Professional Licensing Agency; Ashley Gibson, Legislative Liaison, Department of Education, 232-6618; American Speech Language Hearing Association; Ashley Humphries, Indiana Secretary of State.

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